

Forest Service, USDA

§218.2

District Rangers' Offices when National Forest proposals are involved; in the Regional Office and Forest Supervisors' Offices when regional proposals are involved; and in Regional Offices and National Headquarters when national proposals are involved. When Manual directives involve Forest Service Research or State and Private Forestry programs, review copies shall be available at comparable administrative offices.

PART 218—PREDECISIONAL ADMINISTRATIVE REVIEW PROCESSES

Subpart A—Predecisional Administrative Review Process for Hazardous Fuel Reduction Projects Authorized by the Healthy Forests Restoration Act of 2003

Sec.

- 218.1 Purpose and scope.
- 218.2 Definitions.
- 218.3 Authorized hazardous fuel reduction projects subject to the objection process.
- 218.4 Legal notice of objection process for proposed authorized hazardous fuel reduction projects.
- 218.5 Reviewing officer.
- 218.6 Who may file an objection.
- 218.7 Filing an objection.
- 218.8 Objections set aside from review.
- 218.9 Objection time periods and process.
- 218.10 Resolution of objections.
- 218.11 Timing of authorized hazardous fuel reduction project decision.
- 218.12 Secretary's authority.
- 218.13 Judicial proceedings.
- 218.14 Information collection requirements.
- 218.15 Applicability and effective date.

Subpart B [Reserved]

AUTHORITY: Pub. L. 108-148, 117 Stat 1887 (Healthy Forests Restoration Act of 2003).

SOURCE: 69 FR 1533, Jan. 9, 2004, unless otherwise noted.

§218.1 Purpose and scope.

This subpart establishes a predecisional administrative review (hereinafter referred to as "objection") process for proposed authorized hazardous fuel reduction projects as defined in the Healthy Forests Restoration Act of 2003 (HFRA). The objection process is the sole means by which administrative review of a proposed authorized hazardous fuel reduction

project on National Forest System land may be sought. This subpart identifies who may file objections to those proposed authorized hazardous fuel reduction projects, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

§218.2 Definitions.

Address—An individual's or organization's current physical mailing address. An e-mail address is not sufficient.

Authorized hazardous fuel reduction project—A hazardous fuel reduction project authorized by the HFRA.

Comments—Specific written comments related to a proposed authorized hazardous fuel reduction project pursuant to the HFRA.

Decision Notice (DN)—A concise written record of a Responsible Official's decision based on an environmental assessment and a finding of no significant impact (FONSI) (40 CFR 1508.13; FSH 1909.15, Chapter 40).

Environmental Assessment (EA)—A public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Environmental Impact Statement (EIS)—A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Forest Service line officer—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions approving hazardous fuel reduction projects subject to this subpart.

Lead objector—For objections submitted with multiple individuals and/or organizations listed, the individual or organization identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

§218.3

Name—The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

National Forest System land—All lands, water, or interests therein administered by the Forest Service (§251.51).

Newspaper(s) of record—Those principal newspapers of general circulation annually identified in a list and published in the FEDERAL REGISTER by each Regional Forester to be used for publishing notices of projects and activities implementing land and resource management plans.

Objection—The written document filed with a Reviewing Officer by an individual or organization seeking predecisional administrative review of a proposed authorized hazardous fuel reduction project as defined in the Healthy Forests Restoration Act of 2003.

Objection period—The 30-calendar-day period following publication of the legal notice in the newspaper of record of an environmental assessment or final environmental impact statement for a proposed authorized hazardous fuel reduction project during which an objection may be filed with the Reviewing Officer.

Objection process—Those procedures established for predecisional administrative review of proposed authorized hazardous fuel reduction projects subject to the Healthy Forests Restoration Act of 2003.

Objector—An individual or organization filing an objection who submitted comments specific to the proposed authorized hazardous fuel reduction project during scoping or other opportunity for public comment as described in the Healthy Forests Restoration Act of 2003. The use of the term “objector” applies to all persons that meet eligibility requirements associated with the filed objection.

Record of Decision (ROD)—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

Responsible Official—The Forest Service employee who has the delegated au-

36 CFR Ch. II (7–1–06 Edition)

thority to make and implement a decision approving proposed authorized hazardous fuel reduction projects subject to this subpart.

Reviewing Officer—The USDA or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart. The Reviewing Officer is the next higher level supervisor of the Responsible Official.

§218.3 Authorized hazardous fuel reduction projects subject to the objection process.

Only authorized hazardous fuel reduction projects as defined by the Healthy Forests Restoration Act of 2003, section 101(2), occurring on National Forest System lands that have been analyzed in an environmental assessment or environmental impact statement are subject to this subpart. Authorized hazardous fuel reduction projects processed under the provisions of the HFRA are not subject to the notice, comment, and appeal provisions set forth in part 215 of this chapter.

§218.4 Legal notice of objection process for proposed authorized hazardous fuel reduction projects.

(a) The Responsible Official shall promptly mail the final environmental impact statement (FEIS) or the environmental assessment (EA) to those who have previously requested to be included on the proposed authorized hazardous fuel reduction project mailing list or are known to have submitted specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment provided during preparation of the environmental assessment or environmental impact statement.

(b) Upon completion and mailing of the FEIS or EA, legal notice of the opportunity to object to a proposed authorized hazardous fuel reduction project shall be published in the applicable newspaper of record identified in paragraph (c) of this section for each National Forest System unit. When the Chief is the Responsible Official, notice shall also be published in the FEDERAL REGISTER. The legal notice shall:

Forest Service, USDA

§218.6

(1) Include the name of the proposed authorized hazardous fuel reduction project and a concise description of the preferred alternative, name and title of the Responsible Official, name of the Forest and/or District on which the proposed authorized hazardous fuel reduction project will occur, instructions for obtaining a copy of the FEIS or EA, and instructions on how to obtain additional information on the proposed authorized hazardous fuel reduction project.

(2) State that the proposed authorized hazardous fuel reduction project is subject to the objection process pursuant to 36 CFR part 218, subpart A, and include the following:

(i) Name and address of the Reviewing Officer with whom an objection is to be filed. The notice shall specify a street, postal, fax, and e-mail address, the acceptable format(s) for objections filed electronically, and the Reviewing Officer's office business hours for those filing hand-delivered objections.

(ii) A statement that objections will be accepted only from those who have previously submitted written comments specific to the proposed authorized hazardous fuel reduction project during scoping or other opportunity for public comment (§218.6(a)).

(iii) A statement that the publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an objection (§218.9(a)) and that those wishing to object should not rely upon dates or timeframe information provided by any other source. A specific date shall not be included in the legal notice.

(iv) A statement that an objection, including attachments, must be filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate Reviewing Officer (§218.7) within 30 days of the date of publication of the legal notice for the objection process. Incorporation of documents by reference shall not be allowed.

(v) A statement describing the minimum content requirements of an objection (§218.7(b)-(c)).

(vi) A statement that the proposed authorized hazardous fuel reduction project is not subject to the notice,

comment, and appeal procedures found at part 215 of this chapter (§218.3).

(c) *Publication.* Through notice published annually in the FEDERAL REGISTER, each Regional Forester shall advise the public of the newspaper(s) of record utilized for publishing legal notice required by this subpart.

§218.5 Reviewing officer.

The Reviewing Officer determines procedures to be used for processing objections when the procedures are not specifically described in this subpart, including such procedures as needed to be compatible to the extent practicable, with the administrative review processes of other Federal agencies, for authorized hazardous fuel reduction projects proposed jointly with other agencies. Such determinations are not subject to further administrative review.

§218.6 Who may file an objection.

(a) Individuals and organizations who have submitted specific written comments related to the proposed authorized hazardous fuel reduction project during the opportunity for public comment provided during preparation of an environmental assessment or environmental impact statement for the proposed authorized hazardous fuel reduction project as characterized in section 104(g) of the HFRA may file an objection. For proposed authorized hazardous fuel reduction projects described in a draft environmental impact statement, such opportunity for public comment will be fulfilled by the comment procedures set forth in 40 CFR 1506.10. For proposed authorized hazardous fuel reduction projects described in an environmental assessment, such opportunity for public comment will be fulfilled during scoping or other public involvement opportunities as environmental assessments are not circulated for public comment in draft form.

(b) Comments received from an authorized representative(s) of an organization are considered those of the organization only. Individual members of that organization do not meet objection eligibility requirements solely on the basis of membership in an organization. A member or an individual

§218.7

must submit comments independently in order to be eligible to file an objection in an individual capacity.

(c) When an objection lists multiple individuals or organizations, each individual or organization shall meet the requirements of paragraph (a) of this section. Individuals or organizations listed on an objection that do not meet eligibility requirements shall not be considered objectors. Objections from individuals or organizations that do not meet the requirements of paragraph (a) shall not be accepted. This shall be documented in the objection record.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity, shall comply with Federal conflict of interest statutes at 18 U.S.C. 202-209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty nor use Government property or equipment in the preparation or filing of an objection. Further, employees shall not incorporate information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

§218.7 Filing an objection.

(a) Objections must be filed with the Reviewing Officer in writing. All objections shall be open to public inspection during the objection process.

(b) It is the objector's responsibility to provide sufficient narrative description of those aspects of the proposed authorized hazardous fuel reduction project addressed by the objection, specific issues related to the proposed authorized hazardous fuel reduction project, and suggested remedies which would resolve the objection.

(c) Incorporation of documents by reference shall not be allowed.

(d) At a minimum, an objection must include the following:

(1) Objector's name and address (§218.2), with a telephone number, if available;

(2) Signature or other verification of authorship upon request (a scanned sig-

36 CFR Ch. II (7-1-06 Edition)

nature for electronic mail may be filed with the objection);

(3) When multiple names are listed on an objection, identification of the lead objector (§218.2). Verification of the identity of the lead objector shall be provided upon request;

(4) The name of the proposed authorized hazardous fuel reduction project, the name and title of the Responsible Official, and the name(s) of the National Forest(s) and/or Ranger District(s) on which the proposed authorized hazardous fuel reduction project will be implemented.

§218.8 Objections set aside from review.

(a) The Reviewing Officer shall set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (§218.4(b)(2)(iv), §218.9(c)).

(2) The proposed project is not subject to the objection procedures of this subpart (§218.3).

(3) The individual or organization did not submit written comments during scoping or other opportunity for public comment (§218.6(a)).

(4) The objection does not provide sufficient information as required by §218.7(b) through (d) for the Reviewing Officer to review.

(5) The objector withdraws the objection.

(6) An objector's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided (§218.7(c)(1)).

(7) The objection is illegible for any reason, including submissions in an electronic format different from that specified in the legal notice.

(b) The Reviewing Officer shall give written notice to the objector and the Responsible Official when an objection is set aside from review and shall state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons shall be documented in the project record.

Forest Service, USDA

§ 218.12

§ 218.9 Objection time periods and process.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the Reviewing Officer within 30 days following the publication date of the legal notice of the EA or FEIS in the newspaper of record (§ 218.4(b)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day as stated in the legal notice or to the end of the calendar day (11:59 p.m.) for objections filed by electronic means such as e-mail or facsimile machine.

(2) The day after publication of the legal notice for this subpart of the EA or FEIS in the newspaper of record (§ 218.4(b)) is the first day of the objection-filing period.

(3) The publication date of the legal notice of the EA or FEIS in the newspaper of record is the exclusive means for calculating the time to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* Timeliness shall be determined by:

(1) The date of the postmark, e-mail, fax, or other means of filing (for example, express delivery service) of an objection and any attachment;

(2) The time and date imprint at the correct Reviewing Officer's office on a hand-delivered objection and any attachments; or

(3) When an objection is electronically mailed, the objector should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the objector does not receive an automated acknowledgment of the receipt of the objection, it is the objector's responsibility to ensure timely receipt by other means.

(d) *Extensions.* Time extensions are not permitted.

(e) *Other timeframes.* The Reviewing Officer shall issue a written response to

the objector(s) concerning their objection(s) within 30 days following the end of the objection-filing period.

§ 218.10 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the Reviewing Officer's written response, either the Reviewing Officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The Reviewing Officer has the discretion to determine whether or not adequate time remains in the review period to make a meeting with the objector practical. All meetings are open to the public.

(b) *Response to objections.* (1) A written response shall set forth the reasons for the response, but need not be a point-by-point review, and may contain instructions to the Responsible Official, if necessary. In cases involving more than one objection to a proposed authorized hazardous fuel reduction project, the Reviewing Officer may consolidate objections and issue one or more responses.

(2) There shall be no further review from any other Forest Service or USDA official of the Reviewing Officer's written response to an objection.

§ 218.11 Timing of authorized hazardous fuel reduction project decision.

(a) The Responsible Official may not issue a Record of Decision (ROD) or Decision Notice (DN) concerning an authorized hazardous fuel reduction project subject to the provisions of this subpart until the Reviewing Officer has responded to all pending objections.

(b) When no objection is filed within the 30-day time period, the Reviewing Officer shall notify the Responsible Official, and approval of the authorized hazardous fuel reduction project in a Record of Decision or Decision Notice may occur on, but not before, the fifth business day following the end of the objection-filing period.

§ 218.12 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

§218.13

(b) Authorized hazardous fuel reduction projects proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment are not subject to the procedures set forth in this subpart. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

§218.13 Judicial proceedings.

The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process for proposed hazardous fuel reduction projects authorized by the HFRA. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions of their positions and contentions. Further, any filing for Federal judicial review of an authorized hazardous fuel reduction project is premature and inappropriate unless the plaintiff has submitted specific written comments relating to the proposed action during scoping or other opportunity for public comment as prescribed by the HFRA, and the plaintiff has challenged the authorized hazardous fuel reduction project by exhausting the administrative review process set out in this subpart. Further, judicial review of hazardous fuel reduction projects that are subject to these procedures is strictly limited to those issues raised by the plaintiff's submission during the objection process, except in exceptional circumstances such as where significant new information bearing on a specific claim only becomes available after conclusion of the administrative review.

§218.14 Information collection requirements.

The rules of this subpart specify the information that objectors must provide in an objection to a proposed authorized hazardous fuel reduction project as defined in the HFRA (§218.7). As such, these rules contain information collection requirements as defined

36 CFR Ch. II (7–1–06 Edition)

in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–0172.

§218.15 Applicability and effective date.

The provisions of this subpart are effective as of January 9, 2004 and apply to all proposed authorized hazardous fuel reduction projects conducted under the provisions of the HFRA for which scoping begins on or after January 9, 2004.

Subpart B [Reserved]

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

Sec.

- 219.1 Purpose and applicability.
- 219.2 Levels of planning and planning authority.
- 219.3 Nature of land management planning.
- 219.4 National Environmental Policy Act compliance.
- 219.5 Environmental management systems.
- 219.6 Evaluations and monitoring.
- 219.7 Developing, amending, or revising a plan.
- 219.8 Application of a new plan, plan amendment, or plan revision.
- 219.9 Public participation, collaboration, and notification.
- 219.10 Sustainability.
- 219.11 Role of science in planning.
- 219.12 Suitable uses and provisions required by NFMA.
- 219.13 Objections to plans, plan amendments, or plan revisions.
- 219.14 Effective dates and transition.
- 219.15 Severability.
- 219.16 Definitions.

Subpart B [Reserved]

Subpart A—National Forest System Land and Resource Management Planning

AUTHORITY: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

SOURCE: 70 FR 1055, Jan. 5, 2005, unless otherwise noted.

§219.1 Purpose and applicability.

(a) The rules of this subpart set forth a process for land management planning, including the process for developing, amending, and revising land